IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 14343 of 2003

Between:

M/s. Kamal Sizing, A unit of Kamal Cloth Stores, Rep.by its Partner Sri Madan Mohan Darak, S/o. late Sri Prutviraj Darak, aged about 52 years, R/o. Plot No. 12, Road No.8, IDA, Katedhan, Hyderabd - 52.

..... PETITIONER

AND

1 Labour Court-I, Hyderabad, rep.by its Presiding Officer, Chandravihar, Hyderabad.
2 Sri A. Venkatesham, S/o. Chandraiah, Age Major, C/o. Shaik Anwar Pasha, R/o. H.No. 3-31, New Hanuman Nagar, Chaitanyapuri, Dilsukhnagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order, Direction, more particularly one in nature of Writ of Mandamus after calling for the records from the 1st Respondent, set aside the order in M.P.No. 65/2001, dt: 06-08-2002.

Counsel for the Petitioner:MR.V.VISWANATHAM

Counsel for the Respondent No. 2: Mr. Shaik Hanwar Pasha.

Counsel for the Respondent No.1: The G.P. for Labour

The Court made the following :

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ORDER:

Heard both sides and at their request, the main Writ Petition itself is taken up for disposal.

The petitioner who is the management filed this Writ Petition inter alia, seeking to assail the correctness of the orders passed in M.P.No. 65 of 2001 dated 6.8.2002 by the first respondent, in pursuance of the application filed under Section 2 of the Industrial Disputes Act. The grievance of the second respondent before the first respondent was that inspite of the award passed earlier in I.D.No. 91 of 1994 directing reinstatement without back wages and attendant benefits, he was not reinstated. Hence, he sought to claim wages from 19.1.2000 to 19.9.2001 at the rate of Rs. 1,155/- per month. Though the petitioner has filed the counter affidavit but subsequently, it is stated that in view of ill-health of the proprietor of the petitioner, he could not possibly participate and lead any evidence in rebuttal. The first respondent proceeded to disposal of the matter ex parte and ultimately allowed the application as sought for along with interest at 6%.

The learned counsel appearing for the petitioner submits that having regard

to the fact that the petitioner-Management in fact received the award in the 2nd Week of February and immediately addressed a letter dated 20.2.2000 directing the 2nd respondent to report for duty. Further having reported on 20th March 2000 he again absented himself next day onwards and did not report duty, therefore, the very application claiming arrears of salary itself is only arbitrary and he cannot make any complaint. Further it is also pointed out that in view of ill-health of the petitioner he could not lead any evidence and therefore, the orders passed are ex-parte.

The counsel appearing on behalf of the respondents sought to reject the aforesaid contention and the amount as claimed is only incidental to the award, which was earlier passed, and therefore, there is nothing wrong in awarding the same.

Having considered the submissions and also on perusal of the material on record, it is seen that admittedly, no evidence has been let in by the petitioner during the enquiry on the application filed by the second respondent under Section 33-C(2) of the Industrial Disputes Act, as the petitioner was not well and he could not be present during the course of enquiry and assist the counsel. There is no serious dispute with regard to the said application by the respondents herein. Admittedly, no evidence is recorded on behalf of the petitioner. It is only on the basis of the evidence as let in on behalf of the second respondent, the first respondent has allowed the application.

Having regard to the substantial plea raised on behalf of the petitioner, it is felt desirable that an opportunity should be given and thereafter, the matter can be decided on merits on contest rather than allowing the matters to be contested on ex-parte.

Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remitted back to the first respondent for disposal on merits after giving an opportunity and notice.

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B. PRAKASH RAO,J

Dated: 07.12.2004

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That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Devinder Gupta, the Chief Justice on this Tuesday, The Seventh Day of December Two Thousand and Four.

To

1 The Presiding Officer, Labour Court-I, Hyderabad,
Chandravihar, Hyderabad.
2. 2 CCs to G.P. for Labour, High Court of A.P, Hyderabad, (OUT)

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